

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2004-1991-PST-E TCEQ ID: RN102437779 CASE NO.: 22062
RESPONDENT NAME: ASAD ENTERPRISES, INC. DBA DAVIS FOOD MART

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Highway 69 North and Farm-to-Market Road 1943 West, Warren, Tyler County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 31, 2008. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Ms. Mary Hammer, Litigation Division, MC 175, (512) 239-2946
Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Daniel Siringi, Air Enforcement Section, MC R-10, (409) 899-8799
TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Mr. Mohammad Sumar, Director, Asad Enterprises, Inc., 4300 Highway 365, Port Arthur, Texas 77642
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: November 7, 2002 and August 17, 2004</p> <p>Dates of NOV/NOE Relating to this Case: February 25, 2003 and October 28, 2004</p> <p>Background Facts:</p> <p>An EDPRP was filed on September 12, 2006. The United States Postal Service returned neither the wrapper sent to the Respondent by certified mail, nor the return receipt "green card". An EDFARP was filed on February 14, 2007. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first-class mail has not been returned, indicating the Respondent received notice of the EDFARP.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST</p> <p>Failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$3,150</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$3,150</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken</p> <p>The Executive Director recognizes that the Respondent ceased operating the Facility in June 2007.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

DATES

PCW 24-Jan-2007

Screening 09-Dec-2004

Priority Due 09-Mar-2005

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Asad Enterprises, Inc. dba Davis Food Mart
 Reg. Ent. Ref. No. RN102437779
 Additional ID No(s) Petroleum Storage Tank Facility ID No. 55209
 Facility/Site Region 10-Beaumont Major/Minor Source Minor Source

CASE INFORMATION

Enf./Case ID No. 22062 No. of Violations 1
 Docket No. 2004-1991-PST-E Order Type 1660
 Case Priority 3 Enf. Coordinator Daniel Siringi
 Media Program(s) Petroleum Storage Tank EC's Team Enforcement Team 4
 Multi-Media
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$3,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement Subtotals 2, 3, & 7 \$150

Notes The Respondent has one NOV with same or similar violations in the past five years at the same facility.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes Respondent did not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer
 Extraordinary
 Ordinary
 N/A X (mark with a small x)

Notes There is no good faith reduction in a default situation.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$2,048
 Approx. Cost of Compliance \$1,950
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$3,150

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$3,150

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$3,150

DEFERRAL

0% Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is offered because this is not an expedited case.

PAYABLE PENALTY

\$3,150

Screening Date 09-Dec-2004

Docket No. 2004-1991-PST-E

PCW

Respondent Asad Enterprises, Inc. dba Davis Food Mart

Policy Revision 2 (September 2002)

Case ID No. 22062

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102437779

Additional ID No(s). Petroleum Storage Tank Facility ID No. 55209

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Daniel Siringi

Site Address Highway 69 North & Farm-to-Market Road 1943 West, Warren, Tyler County

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has one NOV with same or similar violations in the past five years at the same facility.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 09-Dec-2004

Docket No. 2004-1991-PST-E

PCW

Respondent Asad Enterprises, Inc. dba Davis Food Mart

Policy Revision 2 (September 2002)

Case ID No. 22062

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102437779

Additional ID No(s). Petroleum Storage Tank Facility ID No. 55209

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Daniel Siringi

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Secondary Rule Cite(s)

Violation Description

Failure to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> Programmatic Matrix

Falsification				Percent
	Major	Moderate	Minor	
	X			10%
Matrix Notes	100% of the rule requirement was not met.			

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 3

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$3,000

Three single events (one event per tank) are recommended based upon the record review on August 17, 2004.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,048

Violation Final Penalty Total \$3,150

This violation Final Assessed Penalty (adjusted for limits) \$3,150

Economic Benefit Worksheet

Respondent: Asad Enterprises, Inc. dba Davis Food Mart
Case ID No.: 22062
Reg. Ent. Reference No.: RN102437779
Additional ID No(s): Petroleum Storage Tank Facility ID No. 55209
Media [Statute]: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	19-Nov-2001	19-Nov-2002	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$650 per tank). Date required is one year prior to initial request. Final date is the initial request date.

Approx. Cost of Compliance **\$1,950****TOTAL** **\$2,048**

Compliance History

Customer/Respondent/Owner-Operator:	CN601577885	ASAD ENTERPRISES INC	Classification: AVERAGE	Rating: 1.500
Regulated Entity:	RN102437779	DAVIS FOOD MART	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):				
Location:	HWY 69 N & FM 1943		Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	November 08, 2004			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 08, 1999 to November 08, 2004			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Daniel Siringi Phone: 409-899-8799

Site Compliance History Components

- | | |
|--|-----------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>ASAD ENTERPRISES INC</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>KHAIL, YOUNIS KHAN</u> |
| 5. When did the change(s) in ownership occur? | <u>01/12/2002</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 10/28/2004 (290974)

2 02/25/2003 (276046)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 02/25/2003 (276046)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]

30 TAC Chapter 37, SubChapter I 37.815(b)[G]

Description: Failure to provide acceptable financial assurance.

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ASAD ENTERPRISES, INC. DBA
DAVIS FOOD MART,
RN102437779**

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§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2004-1991-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Asad Enterprises, Inc. dba Davis Food Mart. ("Asad Enterprises").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Asad Enterprises operated a convenience store with retail sales of gasoline located at Highway 69 North and Farm-to-Market Road 1943 West in Warren, Tyler County, Texas (the "Facility").
2. Asad Enterprises' underground storage tanks ("USTs") were not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Asad Enterprises' USTs contained a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on August 17, 2004, a TCEQ Beaumont Regional Office investigator documented that Asad Enterprises violated 30 TEX. ADMIN. CODE §§ 37.815(a) and (b) by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.
4. Asad Enterprises received notice of the violation on or about November 3, 2004.
5. The Executive Director recognizes that Asad Enterprises ceased operating the Facility in June 2007.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Asad Enterprises' Inc. dba Davis Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on September 12, 2006.
7. By letter dated September 12, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director attempted to serve Asad Enterprises with notice of the EDPRP. The United States Postal Service did not return the return receipt "green card" or the wrapper sent by certified mail.
8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Asad Enterprises Inc. dba Davis Food Mart" (the "EDFARP") in the TCEQ Chief Clerk's office on February 14, 2007.
9. By letter dated February 14, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Asad Enterprises with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Asad Enterprises received notice of the EDFARP.
10. More than 20 days have elapsed since Asad Enterprises received notice of the EDFARP, provided by the Executive Director. Asad Enterprises failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Asad Enterprises is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, 30 TEX. ADMIN. CODE chs. 37 and 70 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Asad Enterprises failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Findings of Fact Nos. 8 and 9, the Executive Director has timely served Asad Enterprises with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

4. As evidenced by Finding of Fact No. 10, Asad Enterprises has failed to file a timely answer to the EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Asad Enterprises and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Asad Enterprises for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Asad Enterprises is assessed an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) for violations of TEX. WATER CODE chs. 7 and 26 and rules of the TCEQ. The payment of this administrative penalty and Asad Enterprises's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Asad Enterprises, Inc. dba Davis Food Mart; Docket No. 2004-1991-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Asad Enterprises. Asad Enterprises is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. If Asad Enterprises fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Asad Enterprises's failure to comply is not a violation of this Order. Asad Enterprises shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Asad Enterprises shall notify the Executive Director within seven days after Asad Enterprises becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Asad Enterprises shall be made in writing to the Executive Director. Extensions are not effective until Asad Enterprises receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Asad Enterprises if the Executive Director determines that Asad Enterprises has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF MARY HAMMER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Mary Hammer. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, Jim Sallans, a staff attorney, filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Asad Enterprises' Inc. dba Davis Food Mart" (the "EDPRP") with the Office of the Chief Clerk on September 12, 2006. Jim Sallans sent the EDPRP to Asad Enterprises at its last known address on September 12, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service did not return the return receipt "green card" or the wrapper sent by certified mail.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Asad Enterprises Inc. dba Davis Food Mart" (the "EDFARP") with the Office of the Chief Clerk on February 14, 2007. I sent the EDFARP to Asad Enterprises at its last known address on February 14, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating the respondent received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

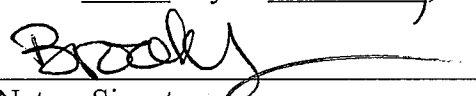
More than 20 days have elapsed since Asad Enterprises received notice of the EDFARP. Asad Enterprises failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference."



Mary Hammer
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Mary Hammer, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 5th day of February, A.D., 2008.



Notary Signature

Notary Stamp

